

(2009) 07 MAD CK 0439

Madras High Court (Madurai Bench)

Case No: Criminal Original Petition No. 729 of 2009

Gobi and Others

APPELLANT

Vs

The State and Krishnamoorthy

RESPONDENT

Date of Decision: July 27, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 307, 436

Hon'ble Judges: G.M. Akbar Ali, J

Bench: Single Bench

Advocate: T. Jeen Joseph, for the Appellant; P. Rajendran, Government Advocate (Crl. Side) for R1 and Sasikumar, for R2, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

G.M. Akbar Ali, J.

This petition has been filed by the petitioner seeking for a direction to quash the order passed in S.C. No. 95 of 2003 dated 18.12.2003 by the learned Assistant Sessions Judge (Chief Judicial Magistrate), Dindigul.

2. The gist of the case is as follows:

(i) A criminal case has been instituted by the second respondent against the petitioners for the offence under Sections 147, 148, 436 r/w 149 & 506(ii) of I.P.C and the same was tried before the learned Assistant Sessions Judge (Chief Judicial Magistrate), Dindigul and after trial, the learned Magistrate convicted and sentenced the petitioners in S.C. No. 95 of 2003 as per the judgment dated 18.12.2003 as follows:

S1 No.

Conviction Recorded

Sentence Imposed

1.	147 I.P.C	To Pay a fine of Rs. 100/- (Rupees One Hundred Only) each and in default to undergo Rigorous Imprisonment for a period of one month.
2.	436 r/w 149 I.P.C	To undergo Rigorous Imprisonment for a period of one year each and to pay a fine of Rs. 500/- (Rupees Five Hundred Only) each and in default to undergo Rigorous Imprisonment for a period of three months.

(ii) Against the judgment passed by the learned Assistant Sessions Judge (Chief Judicial Magistrate), Dindigul, the petitioners preferred an appeal in Crl.A.No.1 of 2004 before the Fast Track Judge (Additional Sessions Judge), Dindigul and the same is pending before the said Court.

3. Learned Counsel appearing for the petitioners submitted that the petitioners and the de-facto complainant are closely related and they have entered into a compromise and they have filed a compromise petition before the learned Fast Track Judge (Additional Sessions Judge), Dindigul on 31.05.2007 and the same was returned by the learned Judge without any endorsement. Therefore, the petitioners has approached this Court to quash the conviction and sentence passed in S.C. No. 95 of 2003 by the learned Assistant Sessions Judge(Chief Judicial Magistrate), Dindigul as per judgment dated 18.12.2003.

4. Learned Counsel relied on the judgment in Mahesh Chand and Anr. v. State of Rajasthan reported in 1991 Scc (Cri) 159, wherein the Supreme Court has held as follows:

The offence not compoundable, however, in view of nature of the case and circumstances under which the offence committed, the trial Court directed to accord permission to compound the offence.

5. Learned Counsel appearing for the petitioner has also relied on the judgment in B.S. Joshi and Others Vs. State of Haryana and Another, for the same proposition.

6. Heard Mr. T. Jeen Joseph, learned Counsel appearing for petitioner, Mr. P. Rajendran, learned Government Advocate(Crl. Side) appearing for the first respondent and Mr. Sasikumar, learned Counsel appearing for the second respondent and perused the materials available on record.

7. When the matter came up for hearing, both the petitioners and the de-facto complainant, who is P.W.1 before the trial Court were present and they have also filed a compromise memo signed by both parties and that is recorded.

8. The petitioners were charged for the offence under Sections 147, 148, 436 r/w 149 & 506(ii) of I.P.C. However, they have found guilty and sentenced for the offence u/s 147 & 436 r/w 149 of I.P.C by the learned Assistant Sessions Judge(Chief Judicial Magistrate), Dindigul by judgment dated 18.12.2003. Against which an appeal is also pending before the learned Fast Track Judge (Additional Sessions Judge), Dindigul.

9. Now, the petitioners have come forward with this petition before this Court stating that they have filed compromise petition before Fast Track Court, Dindugal, where the appeal is pending and it was not admitted by the said Court.

10. Now the petitioners have invoked the inherent powers of this Court u/s 482 of Cr.P.C to quash the conviction and sentence passed in S.C. No. 95 of 2003 by the Assistant Sessions Judge(Chief Judicial Magistrate), Dindigul on the basis of the compromise entered between the parties.

11. The Section 482 of Cr.P.C has held as follows:

Saving of inherent powers of High Court- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

12. In the judgment in State of Haryana and others Vs. Ch. Bhajan Lal and others , the principles and guidelines for quashing of complaints, the First Information Report and criminal proceedings have been settled in terms thereof.

13. In my considered view, the inherent powers u/s 482 of Cr.P.C cannot be invoked to set aside the conviction and sentence and the only course available to the accused/petitioners is to prefer an appeal or revision.

14. However, the facts considered in Mahesh Chand and Anr. v. State of Rajasthan reported in 1991 Scc (Cri) 159, is that the accused were acquitted by the trial Court, but they were convicted by the High Court for the offence u/s 307 I.P.C. However, that offence was not compoundable under law, the parties wanted to treat the case as a special case as there has been a compromise. The Honourable Supreme Court had considered this point and has stated as follows:

3. We have our anxious consideration to the case and also the plea put forward for seeking permission to compound the offence. After examining the nature of the case and the circumstances under which the offence was committed, it may be proper that the trial Court shall permit them to compound the offence.

15. I have no hesitation to follow the parameter laid down in the above case, considering the fact that the de-facto complainant and the accused are closely

related, the alleged offence are u/s 147 & 436 r/w 149 I.P.C and the conviction and sentence are minimum and the parties have compromised among themselves and the parties are permitted to compound the offence, though they are not non-compoundable.

16. In my considered view, the appropriate forum is that the Fast Track Court, Dindigul, where the criminal appeal is pending for the consideration of compounding the offence, though the offences are non-compoundable, the Appellate Court is bound by the above judgment of the Hon"ble Supreme Court and can compound the offence.

17. Therefore, the petitioners and the de-facto complainant are directed to appear before the Fast Track Court, Dindigul, wherein the criminal appeal is pending to file a petition for compounding along with compromise memo and the learned Fast Track Judge (Additional Sessions Judge), Dindigul is directed to permit the petitioners and de-facto complainant to compound the offence even though it is non-compoundable as the offences are not serious in nature and the sentence is very minimum.

With the above said direction, this petition is disposed of.